



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety
Administration**

AUG 29 2018

1200 New Jersey Avenue, SE
Washington, DC 20590

Brandon K. Wiseman
Scopelitis, Garvin, Light, Hanson, & Feary, P.C.
10 West Market Street
Suite 1400
Indianapolis, IN 46204

Reference No. 18-0076

Dear Mr. Wiseman:

This letter is in response to your May 17, 2018, email requesting clarification of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) applicable to product returns from consumers.

In your letter, you provide a scenario in which:

- Company XYZ is an online shipping service that offers a platform for manufacturers and retailers to sell their products to end users.
- Company XYZ does not physically handle the products.
- Company XYZ will provide a return label to end users upon request.

We have paraphrased and answered your questions as follows:

- Q1. You ask if Company XYZ would be considered an offeror in the scenario provided.
- A1. Company XYZ would be considered an offeror if it performs a pre-transportation function, as defined in § 171.8, or if the label it provides to consumers is used to generate a hazardous materials shipping paper.
- Q2. You ask if Company XYZ would have any obligations under the HMR in the scenario provided.
- A2. If Company XYZ is not considered an offeror (see A1), then it would have no obligations under the HMR.

Q3. You ask if requirements for reverse logistics would apply in the scenario provided.

A3. The requirements for PHMSA's reverse logistics apply to the transport by motor vehicle of goods from a retail store for return to its manufacturer, supplier, or distribution center. Shipments from a consumer to a manufacturer, supplier, or distribution center would not be considered reverse logistics.

I hope this information is helpful. Please contact us if we can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Glenn Foster". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

T. Glenn Foster
Chief, Regulatory Review and Reinvention
Standards and Rulemaking Division

Wolcott
Batteries
18-0076

January, Ikeya CTR (PHMSA)

From: INFOCNTR (PHMSA)
Sent: Thursday, May 17, 2018 5:11 PM
To: Hazmat Interps
Subject: FW: Status of PHMSA Interpretation Rqst
Attachments: PHMSA Interpretation Rqst 2-19-18 v2.pdf

Hi Ikeya,

Attached is a request for a letter of interpretation. Mr. Wiseman spoke with Eugenio regarding his request. Please let me know if you have any questions.

Thanks,
Jodi

From: Wiseman, Brandon [mailto:bwiseman@scopelitis.com]
Sent: Thursday, May 17, 2018 1:42 PM
To: INFOCNTR (PHMSA) <INFOCNTR.INFOCNTR@dot.gov>
Subject: Status of PHMSA Interpretation Rqst

Hello,

Earlier this year, we filed the attached Request for Official Interpretation with PHMSA. We have not yet received a response, so I just wanted to check on the status. Thank you.

Brandon K. Wiseman, Attorney
Scopelitis, Garvin, Light, Hanson & Feary, P.C.
10 West Market Street, Suite 1400, Indianapolis, IN 46204
bwiseman@scopelitis.com | T: 317.637.1777 | D: 317.492.9296

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February 19, 2018

U.S. Department of Transportation
PHMSA Standards and Rulemaking Division
Attn: PHH-10
East Building
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

Re: Request for Official Interpretation

Dear Sir/Madam:

This question concerns who is responsible for compliance with the Hazardous Materials Regulations (“HMRs”) in situations where products are returned by end users, and when those returns are facilitated by the online service from which those end users purchased the products in the first place.

By way of example, Company XYZ is an online shopping service that offers a platform for unrelated manufacturers and retailers to sell their products directly to end users. Company XYZ does not typically physically handle the products, but merely facilitates the sales by listing the products on its website, collecting payments for those products, and occasionally coordinating and accepting customer returns.

When it comes to customer returns, Company XYZ offers a means by which the customer can request a return and print a return label so that the customer can then ship the product back to either the manufacturer or retailer directly, or to Company XYZ for disposal. Occasionally, these products may contain small quantities of hazardous materials (e.g., lithium batteries). The question, then, is who, as between the customer, the manufacturer/retailer, and Company XYZ, is responsible for complying with the HMRs when the products are returned.

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It appears the Pipeline & Hazardous Materials Administration (“PHMSA”) addressed a similar, but not identical, question in Interpretation Response #CHI-10-005 on October 6, 2010, a copy of which is enclosed. There, PHMSA explained that the responsibility of compliance with the HMRs in “return scenarios” depends in large part on who is performing the pre-transportation functions listed in 49 C.F.R. § 171.8. In other words, who qualifies as an “offeror?”

In that interpretation, PHMSA addressed a situation where Company A issued a “call tag” to Company B so that Company B could then return hazardous materials that it had originally received from Company A. In pertinent part, PHMSA went on to state:

If Company B has opened and closed the package, or placed the hazardous material into a new package, they have engaged in pre-transportation functions and must assure that the package is properly closed and certify that the hazardous material is in proper condition for transportation in conformance with the requirements of the HMR. Company B is responsible for the package.

Given this response, it is our impression that in the Company XYZ scenario described above, the end customer would be the “offeror” of the product(s) that he/she is returning, given that he/she performs the pre-transportation functions of selecting and closing the packaging, placing the labels on the packages, and tendering the packages to a carrier (e.g., UPS or FedEx) to ship back to the manufacturer/retailer or to Company XYZ for disposal. It is also our understanding that Company XYZ would *not* be an “offeror,” since it is not performing any pre-transportation functions under 49 C.F.R. § 171.8, but merely facilitating the return by, for example, providing return shipping labels—similar to the “call tags” issued by Company A in the attached interpretation—and, in some cases, accepting delivery of the returns.

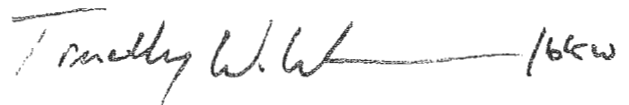
Nevertheless, we respectfully seek confirmation that:

1. Company XYZ would not be an “offeror” of hazardous materials in the example described in this letter, simply by virtue of its facilitation of product returns from end users to the products manufacturers/retailers.
2. If so, Company XYZ would have no obligations under the HMRs in the example described in this letter.
3. PHMSA’s so-called “reverse logistics” regulations do not apply in this context, given that the products are being returned by end consumers rather than retailers.

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February 19, 2018

We appreciate your consideration of these questions. If you need any additional information, please contact me.

Very truly yours,

Handwritten signature of Timothy W. Wiseman in black ink, with the initials "bkw" written at the end of the signature.

Timothy W. Wiseman

TWW/bkw
Enclosures

4813-0395-2188, v. 1



U.S. Department
of Transportation

**Pipeline and Hazardous
Materials Safety Administration**

Office of
Chief Counsel

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***Hazardous Materials Safety
Law Division***

LETTER OF INTERPRETATION

October 6, 2010

Andrea Abraham, Esq.
Meeks, Sheppard, Leo & Pillsbury
1735 Post Road, Suite 4
Fairfield, CT 06824

Dear Ms. Abraham:

This letter is in response to your email request on September 8, 2010 in which you asked for a Letter of Interpretation from the Office of the Chief Counsel. In particular, you are concerned with the offeror's responsibilities.

The Hazardous Materials Regulations, in 49 C.F.R. § 171.8, define a "Person who offers or offeror" as:

(1) Any person who does either or both of the following:

(i) Performs, or is responsible for performing, any pre-transportation function required under this subchapter for transportation of the hazardous material in commerce.

(ii) Tenders or makes the hazardous material available to a carrier for transportation in commerce.

(2) A carrier is not an offeror when it performs a function required by this subchapter as a condition of acceptance of a hazardous material for transportation in commerce (*e.g.* , reviewing shipping papers, examining packages to ensure that they are in conformance with this subchapter, or preparing shipping documentation for its own use) or when it transfers a hazardous material to another carrier for continued transportation in commerce without performing a pre-transportation function.

Further, the Hazardous Materials Regulations, in 49 C.F.R. §171.8, define “Pre-transportation function” as:

a function specified in the HMR that is required to assure the safe transportation of a hazardous material in commerce, including—

- (1) Determining the hazard class of a hazardous material.
- (2) Selecting a hazardous materials packaging.
- (3) Filling a hazardous materials packaging, including a bulk packaging.
- (4) Securing a closure on a filled or partially filled hazardous materials package or container or on a package or container containing a residue of a hazardous material.
- (5) Marking a package to indicate that it contains a hazardous material.
- (6) Labeling a package to indicate that it contains a hazardous material.
- (7) Preparing a shipping paper.
- (8) Providing and maintaining emergency response information.
- (9) Reviewing a shipping paper to verify compliance with the HMR or international equivalents.
- (10) For each person importing a hazardous material into the United States, providing the shipper with timely and complete information as to the HMR requirements that will apply to the transportation of the material within the United States.
- (11) Certifying that a hazardous material is in proper condition for transportation in conformance with the requirements of the HMR.
- (12) Loading, blocking, and bracing a hazardous materials package in a freight container or transport vehicle.
- (13) Segregating a hazardous materials package in a freight container or transport vehicle from incompatible cargo.
- (14) Selecting, providing, or affixing placards for a freight container or transport vehicle to indicate that it contains a hazardous material.

The following summarizes your scenario:

You represent company (A) which has transported a hazardous material to another company (B). A package needs to be returned to Company A, so Company A issues a call tag to have the material picked up from Company B and shipped back to Company A. United Parcel Service (UPS) goes to Company B with a return label, puts it on the package and returns the

package to Company A. What liability could Company A face if an incident occurs en route? Does the liability issue change if the shipment is still in the original Company A packaging and has not been repacked by Company B?

In your scenario, Company A has engaged in pre-transportation functions by packaging, marking and labeling the package. Company A has also made the hazardous material available to a carrier for transportation to Company B. When the package goes from Company A to Company B, Company A has performed all pre-transportation functions and offered the package into commerce. Company A is responsible and must comply with the Hazardous Materials Regulations.

When a call tag has been issued by Company A for the hazardous material to be returned to Company A, and Company B has not opened the package, Company B has not engaged in any pre-transportation functions due to the fact that they have not selected the packaging, marked or labeled the package. UPS, as the carrier who places the return label on the package is not a person who offers. However, Company B, is a person who offers because they have made the package available to a carrier for transport. In this situation, Company A and B must both comply with the requirements of the Hazardous Materials Regulations. Company A would have more culpability under the regulations because they selected the packaging, marked and labeled the package.

If Company B has opened and closed the package, or placed the hazardous material into a new package, they have engaged in pre-transportation functions and must assure that the package is properly closed and certify that the hazardous material is in proper condition for transportation in conformance with the requirements of the HMR. Company B is responsible for the package.

You have also asked the following questions:

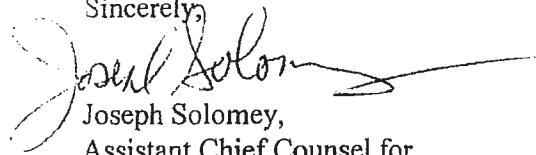
Do the Interpretation letters CHI-04-001 and CHI-04-002 apply to this case? The interpretation letters that you have referenced do not apply to this scenario. Interpretation Letters CHI-98-001 and CHI-89-001 are more on point to this scenario.

Are there any other interpretation letters involving call tags? No.

Are there any enforcement actions regarding call tags? If so, please provide the numbers/dates. PHMSA has not had any enforcement actions against a company regarding call tags.

I hope this information is helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph Solomey", with a long horizontal flourish extending to the right.

Joseph Solomey,
Assistant Chief Counsel for
Hazardous Materials Safety